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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

SERVANDO BETANCOURT, JR.,

Defendant and Appellant.

H041471

(Santa Clara County

Super. Ct. No. C1243957)

I. INTRODUCTION

After his motion to suppress was denied, defendant Servando Betancourt, Jr. pleaded no contest to inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a)¹), possession for sale of marijuana (Health & Saf. Code, § 11359), possession for sale of methamphetamine (*id.*, § 11378), and possession for sale of cocaine (*id.*, § 11351). The trial court suspended imposition of sentence and placed defendant on probation for three years with various terms and conditions, including that he serve nine months in county jail.

On appeal, defendant contends that the trial court erred by denying his motion to suppress evidence because there were no exigent circumstances and no consent was given to justify the police officers' warrantless entry of a locked bedroom in his residence. For the reasons stated below, we will affirm the judgment.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Evidence at the Motion to Suppress

1. Testimony of San Jose Police Officers

San Jose Police Officer Christopher Craig testified that he and another officer were dispatched to a residential area based on two separate reports of a woman shouting at a man, “You beat me,” in a common carport area shortly before 4:30 a.m. Officer Craig arrived a few minutes later and parked in the carport area, which was adjacent to the backs of several townhouses. It was still dark and he did not see anyone outside. Officer Craig waited and observed the area.

About 4:54 a.m., Officer Craig notified dispatch that he saw some activity with the lights in one of the townhouses. The officer observed the lights go off in the second story of a two-story townhouse, and he heard a child whimpering downstairs. The officer also saw a broken window in the back of the residence. There were several cars parked behind the residence. The officer performed a records check through dispatch regarding whether there were prior reports of anything at that location. The records check revealed that there was an arrest warrant for someone who had lived at the address although Officer Craig later determined that the arrest warrant was not for defendant.

About 4:56 a.m., Officer Craig knocked on the front door of the residence, and the victim answered the door. She had a very large contusion or “goose egg” on her forehead about the size of a golf ball. The victim reported that her boyfriend, defendant, had thrown a bottle at her during an argument. She also indicated that she lived at the residence with defendant and their two-year-old child.

Officer Craig had been a police officer for approximately 13 years and had investigated several hundred domestic violence incidents. When starting a domestic violence investigation, Officer Craig is concerned about officer safety, the victim’s safety, and the safety of others who are on or coming to the scene. The domestic violence incidents tend to be particularly emotional.

When Officer Craig contacted the victim, he could not see anyone else inside the residence. Officer Craig testified that the victim indicated that defendant had already gone “to work at an unknown location or site . . . in Oakland.” Officer Craig had concerns whether this was true. In his experience, domestic violence victims were not always forthcoming with officers. In this case, other people had called the police rather than the victim, and thus it did not appear that the victim was readily seeking the help of law enforcement. She also appeared very nervous when she opened the door. Moreover, although she was cooperative and explained what had occurred, she was not “readily forthcoming with specific details at that time.” Officer Craig believed the victim was honest about being in an incident with her boyfriend, but that she was “hoping to just kind of talk it down and hopefully [the police] would go away.”

Officer Craig asked the victim if he could enter the residence to confirm that defendant was not present, and the victim consented. Officer Craig and the second officer checked all the rooms except for one locked bedroom on the second floor. It appeared the bedroom door could be locked with a key from the inside or the outside of the room. The victim had not expressed any concerns about the search of the residence until the police reached the locked bedroom. Although the victim was still cooperative, she became a lot more nervous and evasive at this point, which made the police “far more concerned.” Officer Craig was concerned that defendant was in the room although the victim had stated otherwise.

Officer Craig asked the victim for the key. She stated that, even though she shared a bedroom with defendant, the locked room was his room and he had the key to it. The police talked to the victim about forcing open the door. The victim’s “big hesitation” was that she did not want to have to pay for the door if it was knocked down. She ultimately did not consent to the door being forced open or broken down.

Officer Craig did not hear any noises coming from the room. He still believed it was important to enter the locked room because defendant might still be on the

premises, and Officer Craig was concerned for the safety of the officers and the victim. Officer Craig had not observed anything that led him to believe that there was other illegal activity occurring in the residence.

By this point San Jose Police Sergeant Christopher Sciba had arrived on the scene. The sergeant briefly talked to the victim downstairs. She indicated that defendant had left for work, but that she did not know where he worked. She also said that she did not have a key for the locked room.

Sergeant Sciba testified that he was concerned about the officers' safety while they finished their domestic violence investigation. His conversation with the victim did not allay his concerns that defendant was in the locked room. To the contrary, it heightened his concern because "any time the conversation went to the room upstairs, she seemed to get nervous or evasive about it" Further, the call regarding the incident did not originate from her, and the sergeant believed that defendant may have hidden upstairs with the victim's knowledge when officers arrived. Sergeant Sciba did not know whether to believe the victim's statement that she did not have a key. He felt that it was feasible that she had a key and did not want to tell the police. He did not know the "dynamics" of her relationship with defendant. Nonetheless, the sergeant "definitely felt that this being her house, her hav[ing] a room in her house she couldn't open, it didn't sound right to [him]."

The police ultimately forced open the bedroom door a few minutes after 5:00 a.m. The police did not locate defendant in the bedroom, or in the attic, which was accessible through the bedroom closet.

There were, however, drugs in plain view. There was marijuana drying in one corner of the room, and marijuana on top of a dresser. In the closet, which was partly open, there was a white powdery substance that appeared to be a controlled substance.

The police were concerned that there were more drugs and paraphernalia throughout the residence. The victim ultimately signed a written consent form to search the residence.

After the residence had been searched, the victim indicated that she had not called the police because she ran a daycare business at the residence. She did not want the embarrassment of having police present when parents arrived to drop off their children. Parents ultimately did attempt to drop off children while the police were still on the scene.

At some point, the victim stated that she was the only person named on the lease, and that she had been in the locked room in the past to clean it.

The police ultimately found a shotgun and more drugs.²

2. Defense testimony

The victim was still dating and living with defendant at the time of her testimony. She testified that when she answered the police officer's knock at the front door, a second officer entered her residence from a back sliding door and came up behind her. She told them what had happened and that defendant had left for work. The officers did not ask for her consent to enter the residence, or for her consent to look for defendant in the residence. Eventually the officers went upstairs. The officers told the victim to wait downstairs with her son.

The victim did not have a key to the locked door, and the officers did not ask if she had a key. The officers also did not ask for her consent to open the door. The officers later brought in a metal object to force open the locked door.

² According to the probation report, defendant was arrested a few hours later when he returned to the residence after work.

The officers were in the victim's residence for about two hours. She was asked to sign the written consent form only after the whole search was over. She felt forced to sign it. She signed it because she believed that they had already searched the house.

3. Rebuttal Testimony

Officer Craig testified that when he made contact with the victim at the front door, the second police officer did not walk in the back door of the residence and meet him at the front door. About 15 to 30 minutes after the locked door was forced open, and before the full search of the residence was conducted, the officer asked the victim whether she would sign the written consent form. The officer was at the house for approximately one and a half to two hours.

B. Charges

Defendant was charged by information with inflicting corporal injury on a cohabitant (§ 273.5, subd. (a); count 1), possession for sale of marijuana (Health & Saf. Code, § 11359; count 2), possession for sale of methamphetamine (*id.*, § 11378; count 3), and possession for sale of cocaine (*id.*, § 11351; count 4).

C. Suppression Motion

Defendant filed a motion to suppress evidence seized during the warrantless search of his residence. (§ 1538.5.) The prosecution filed opposition to the motion, arguing that the officers' entrance into the residence was justified based on exigent circumstances and the consent of defendant's girlfriend, who apparently resided there. Once inside the bedroom, officers lawfully seized the items in plain view.

At the hearing on the motion, the prosecution argued that the victim, who resided in the home, gave valid consent for the officers to enter the residence to confirm that defendant was not present. The prosecution further argued that exigent circumstances existed which justified entry into the locked room because officers had an obligation to confirm the safety of the domestic violence victim. Although the victim stated that defendant was not present, the officers had reason to disbelieve her, including her failure

to initially call the police and her nervousness about the locked door. The officers had no reason to believe that any other crime was going on inside the residence, and thus they reasonably concluded that defendant was in the locked room when the victim appeared more nervous about that room.

Defendant at the hearing sought “to suppress everything from the moment the officer kicked down” the locked door. Defendant argued that the officers should have taken the victim out of the residence, secured the residence, and obtained a warrant. Defendant contended that there was no consent and there were no exigent circumstances to justify the warrantless entry. Defendant argued that the victim did not consent to officers entering the residence or to forcing open the locked door. Further, an officer’s general knowledge about domestic violence situations, such as that they are highly emotional and include violence, does not create an exigency that allows an officer to enter a home. Defendant also argued that Officer Craig had no reason to disbelieve the victim’s statement that defendant was no longer in the residence, and that the officer had no other facts to indicate that defendant was in the residence.

The trial court denied the motion to suppress. Regarding the initial entry into the home, the court found that the victim consented to the officers looking in the residence. Further, in view of the victim’s injury, the court determined that the officers would have been derelict in their duty if they had failed to confirm whether there was still an ongoing danger to the victim. The court believed it was “common in domestic violence cases when a perpetrator is in the home, there is a lot of opportunity for a person to hide, and it is not unusual for the victim not to be readily forthcoming with the whereabouts of someone with whom they have a relationship.”

Regarding entry of the locked bedroom, the court determined that exigent circumstances existed. The court indicated that the officers’ testimony was credible. The court referred to the victim’s conduct at the front door and concluded that “it was reasonable for the officers to suspect that [defendant] was hiding in the bedroom; and

therefore, proceeded to enter the bedroom to make sure that he wouldn't later pose a danger to [the victim] and to the officers.”

Lastly, the court found valid written consent by the victim for the purpose of doing a search beyond what was in plain view.

D. Pleas and Sentence

Defendant pleaded no contest to all counts after the trial court gave an indicated sentence of a grant of probation with various terms and conditions. The trial court ultimately suspended imposition of sentence and placed defendant on probation for three years with various terms and conditions, including that he serve nine months in county jail.

III. DISCUSSION

Defendant contends the trial court erred by denying his motion to suppress. He argues that the victim's consent to the officers' initial entry into the residence did not extend to the officers entering the locked room. Defendant also argues that exigent circumstances did not exist, and that the officers did not have probable cause to believe he was in the locked room.

The Attorney General contends that the police reasonably entered the locked bedroom under the exigent circumstances doctrine to search for defendant.

“As the finder of fact in a proceeding to suppress evidence (Pen. Code, § 1538.5), the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable. [Citation.]” (*People v. Woods* (1999) 21 Cal.4th 668, 673.) On appeal, all factual conflicts must be resolved in the manner most favorable to the trial court's disposition. (*Ibid.*) “In reviewing the trial court's denial of a motion to suppress evidence, we view the record in the light most favorable to the trial court's ruling, deferring to those express or implied findings of fact supported by substantial evidence. [Citations.]” (*People v. Jenkins* (2000) 22 Cal.4th

900, 969.) “[W]e uphold the trial court’s factual findings if they are supported by substantial evidence, but review independently its determination that the search did not violate the Fourth Amendment. [Citation.]” (*People v. Troyer* (2011) 51 Cal.4th 599, 606 (*Troyer*).)

“ ‘[T]he “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” ’ [Citation.] Thus, ‘searches and seizures inside a home without a warrant are presumptively unreasonable.’ [Citation.] ‘Nevertheless, because the ultimate touchstone of the Fourth Amendment is “reasonableness,” the warrant requirement is subject to certain exceptions.’ [Citation.]” (*Troyer, supra*, 51 Cal.4th at p. 602.) The government bears the burden of establishing an exception to the warrant requirement. (*People v. Rogers* (2009) 46 Cal.4th 1136, 1156 (*Rogers*).)

“ ‘A long-recognized exception to the warrant requirement exists when “exigent circumstances” make necessary the conduct of a warrantless search. . . . “ ‘[E]xigent circumstances’ means an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence. There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers.” ’ [Citations.]” (*People v. Panah* (2005) 35 Cal.4th 395, 465.) “Generally, a court will find a warrantless entry justified if the facts available to the officer at the moment of the entry would cause a person of reasonable caution to believe that the action taken was appropriate. [Citation.]” (*Rogers, supra*, 46 Cal.4th at p. 1157.)

“However, an exigency excusing the warrant requirement does not also excuse the requirement that probable cause exists for searching a home for evidence or suspects. [Citation.]” (*People v. Ormonde* (2006) 143 Cal.App.4th 282, 292 (*Ormonde*).) “ ‘When the police act pursuant to the exigent circumstances exception, they are searching for evidence or perpetrators of a crime. Accordingly, in addition to showing the existence of

an emergency leaving no time for a warrant, they must also possess probable cause that the premises to be searched contains such evidence or suspects. [Citations.]’ ” (*People v. Ray* (1999) 21 Cal.4th 464, 471 (lead opn. of Brown, J.) (*Ray*).)

In cases involving domestic violence, “the seriousness of the offense does not, by itself, give rise to an exigent circumstance. Even a homicide does not warrant a blanket exception to the Fourth Amendment on that basis. [Citation.]” (*Ormonde, supra*, 143 Cal.App.4th at p. 291.) Moreover, “ ‘[t]he work of a police officer in the field is often fraught with danger. At any given moment, a seemingly safe encounter or confrontation with a citizen can suddenly turn into an armed and deadly attack on the officer.’ [Citation.]” (*Id.* at p. 295.) Thus, an officer’s past experiences with domestic violence arrests does not automatically justify a warrantless entry into the defendant’s home, as this would be “tantamount to creating a domestic violence exception to the warrant requirement. This we cannot do. [Citation.]” (*Ibid.*)

Although domestic violence does not, by itself, give rise to exigent circumstances, it is a factor that may be considered in determining whether exigent circumstances exist. (*People v. Hochstraser* (2009) 178 Cal.App.4th 883, 900.) “ ‘Police officers responding to a domestic violence report have a duty to ensure the present and continued safety and well-being of the occupants.’ ” (*People v. Higgins* (1994) 26 Cal.App.4th 247, 253 (*Higgins*).) “[C]ase law recognizes that probable cause of ongoing spousal abuse at a residence” may warrant immediate police intervention. (*Id.* at p. 252.) Requiring an officer to always obtain a search warrant before entering a dwelling in response to a domestic violence call may cause “ ‘a meaningless delay that could lead to the occurrence of otherwise preventable violence.’ ” (*Ibid.*) “The risk of imminent violence resulting in further physical harm to the victim [is] an exigent circumstance requiring immediate action. [Citations.]” (*People v. Wilkins* (1993) 14 Cal.App.4th 761, 772 (*Wilkins*).)

In this case, defendant does not challenge the officers’ initial entry into the residence; he only challenges the officers’ entry into the locked bedroom. We agree with

the trial court's determination that the officers' warrantless entry into the locked bedroom was justified.

First, the officers had “ ‘probable cause that the premises to be searched contain[ed] . . . [a] suspect[.]’ ” (*Ray, supra*, 21 Cal.4th at p. 471 (lead opn. of Brown, J.)). The victim was at the residence and reported that defendant, her boyfriend, had caused her injury. The officers' observations of the victim's behavior gave the officers probable cause to believe defendant was still in the residence, in view of the victim's failure to initiate contact with the police, her consent to a search of all but the locked room, her nervousness and evasiveness in relation to the locked room, and her claim to not have access to the room despite the apparent otherwise normal familial living arrangements with defendant and their son.

Second, there was “probable cause of ongoing spousal abuse at [the] residence” based on the following circumstances. (*Higgins, supra*, 26 Cal.App.4th at p. 252.) The police received reports about a woman claiming to have been beaten. When contacted by officers at the residence, the victim had a visible head injury and she told officers that defendant had thrown a bottle at her. In view of the significant injury the victim sustained during an argument with defendant a short time prior to the arrival of the police, and given that there was probable cause to believe that defendant was still in the residence, there was a “risk of imminent violence resulting in further physical harm to the victim,” which “[is] an exigent circumstance requiring immediate action.” (*Wilkins, supra*, 14 Cal.App.4th at p. 772.) Officers were thus justified in searching the residence, including the locked room, to confirm whether defendant was in the residence. In sum, “the facts available to the officer[s] at the moment of the entry [into the locked bedroom] would cause a person of reasonable caution to believe that the action taken was appropriate.” (*Rogers, supra*, 46 Cal.4th at p. 1157.)

Defendant primarily relies on *Ormonde* and *People v. Werner* (2012) 207 Cal.App.4th 1195 (*Werner*) to argue that the “objective circumstances known to the

officers fell short of supplying them with the requisite probable cause to break down the locked door to a room inside the house.”

Both cases are distinguishable in significant respects. In *Ormonde*, one of the police officers testified generally about responding to domestic violence calls, including that they were “ ‘one of the most dangerous’ and ‘highly unpredictable’ things a police officer could do,” and that “[o]n numerous occasions he had had to ‘arrest more than just the suspect’ ” because of violence against the police or others after the police arrived. (*Ormonde*, *supra*, 143 Cal.App.4th at p. 286.) However, at the time the police entered the defendant’s apartment, which contained drugs, the police knew that the victim of domestic violence was *not inside* the apartment but rather “safely away from the premises.” (*Id.* at p. 291.) Further, although the police were aware that a third party, who was the victim’s husband and who was *outside* the apartment where he was eventually arrested for domestic battery, “had some sort of connection with the apartment,” “[n]one of the police officers who testified articulated any reason to believe that other victims or suspects were involved in the battery, or inside the apartment.” (*Ibid.*) Rather, one of the officers testified that he entered the apartment’s front door, which was open, because he was uncertain whether someone might emerge with a weapon. (*Id.* at p. 287.)

This court determined that exigent circumstances did not justify a warrantless entry into the defendant’s apartment. This court explained that a serious offense, such as domestic battery, “does not, by itself, give rise to an exigent circumstance.” (*Ormonde*, *supra*, 143 Cal.App.4th at p. 291.) This court further concluded that “the *objective* circumstances known to [the police] fell short of supplying them with probable cause to believe there was someone in the apartment who was either in danger or dangerous to them.” (*Id.* at p. 292.)

In contrast, in the present case, the victim, who cohabitated with defendant, was *inside* the residence when officers made contact with her and she had suffered a very

large contusion to the head. The victim's behavior and the circumstances of the single locked room gave the officers probable cause to believe that defendant was also inside the residence. If defendant was inside the residence, there was an immediate risk of further physical harm to the victim. The "objective circumstances" known to the police thus supplied them with "probable cause to believe there was someone in the [residence] who was either in danger or dangerous to them." (*Ormonde, supra*, 143 Cal.App.4th at p. 292.) Officers were therefore justified in entering the locked room without a warrant. (*Rogers, supra*, 46 Cal.4th at p. 1157.)

In *Werner*, sheriff's deputies went to the defendant's residence after receiving a report of domestic violence. This court determined that the warrantless entry of the defendant's residence was not justified under the protective sweep doctrine, which applies when law enforcement has " 'a reasonable suspicion that the area to be swept harbors a dangerous person.' " (*Werner, supra*, 207 Cal.App.4th at p. 1207, italics omitted.) Among other factors, this court observed that, at the time the deputy entered the residence, the defendant was already in handcuffs outside the residence, the crime had taken place "hours earlier," the alleged victim was no longer at the defendant's home, the defendant's roommate had been frisked and otherwise "posed no threat," and "there was no evidence that deputies were aware of any ongoing criminal activity in the home, or that there were others even present inside, let alone that it 'harbor[ed] a dangerous person.' " (*Ibid.*) Thus, "the evidence showed nothing more than a generalized concern for officer safety," which did not constitute a reasonable suspicion based upon articulable facts. (*Id.* at p. 1209.)

In contrast, in the present case, officers had probable cause to believe that defendant was inside the residence with the victim, who had recently sustained a head injury from defendant. Under the circumstances, there was a "risk of imminent violence resulting in further physical harm to the victim," which "was an exigent circumstance requiring immediate action." (*Wilkins, supra*, 14 Cal.App.4th at p. 772.)

Accordingly, we conclude that the trial court properly denied the motion to suppress the evidence that officers obtained following the warrantless entry into the locked room.

IV. DISPOSITION

The order of probation is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.